

COMMONWEALTH OF KENTUCKY
NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
FILE NOS. BFA-24418-042; BFA-24471-042; BFA-24320-042 AND BFA-24526-042
PERMIT NO. 848-5332
NON-COMPLIANCE NOS. 21-0761; 21-0947; 21-0883 AND 21-0948
FAILURE TO ABATE CESSATION ORDER NOS. 02-2154; 02-2456; 02-2153 AND 02-2457

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET

PLAINTIFF

VS.

SECRETARY'S FINAL ORDER

WALTER CALDWELL, JR.

DEFENDANT

* * * * *

THIS MATTER is before the Secretary upon the Report and Recommended Secretary's Order of James L. Dickinson, Hearing Officer, and the Secretary having considered the Report and Recommendation and any exceptions and responses filed thereto, and being sufficiently advised:

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

1. The Hearing Officer's Report and Recommendation entered in the record on [2/21/00], 2000, is **ADOPTED** and is incorporated by reference and made a part herein, as if set forth verbatim.
2. The Defendant, Walter Caldwell, Jr., **HAS WAIVED ALL RIGHTS** to a formal hearing to contest this matter.
3. As evidenced by the Secretary's Order in File Nos. PAC-24471-II, PAC-24418-II, PAC-24320-II and PAC-24526-II, the Defendant, Walter Caldwell, Jr., **HAS VIOLATED** the conditions of Surface Coal Mining and Reclamation Operations Permit No. 848-5332, the Kentucky Surface Mining Laws and the regulations promulgated pursuant thereto, as cited in Notice of Non-Compliance and Order for Remedial Measures Nos. 21-0761, 21-0947, 21-0883

and 21-0948 and Orders of Cessation and Immediate Compliance, hereinafter "Failure to Abate Cessation Order," Nos. 02-2154, 02-2456, 02-2153 and 02-2457.

4. Permit No. 848-5332 is **REVOKED**.

5. The performance bond for Permit No. 848-5332 in the amount of seventy-four thousand seven hundred dollars (\$74,700), as secured by Certificate of Deposit No. 044481, as issued by the Powell Valley National Bank **IS FORFEITED** to the Natural Resources and Environmental Protection Cabinet.

6. The Defendant, Walter Caldwell, Jr., has **FAILED TO ABATE** the violations set forth in the Notice of Non-Compliance and Order for Remedial Measures Nos. 21-0761, 21-0947, 21-0883 and 21-0948 and Failure to Abate Cessation Order Nos. 02-2154, 02-2456, 02-2153 and 02-2457.

7. The Defendant, Walter Caldwell, Jr., **SHALL IMMEDIATELY PERFORM ALL REMEDIAL MEASURES AND ABATE ALL VIOLATIONS** cited in Notice of Non-Compliance Nos. 21-0761, 21-0947, 21-0883 and 21-0948 and Failure to Abate Cessation Order Nos. 02-2154, 02-2456, 02-2153 and 02-2457 and shall continue the performance of said remedial measures until all violations are abated and shall perform all necessary reclamation to achieve the approved post-mining land use.

8. The Defendant, Walter Caldwell, Jr., **IS INELIGIBLE** to receive another permit, begin another mining operation or have suspended permits or operations reinstated, until all requirements of the Kentucky Surface Mining Laws have been met.

9. This is a **FINAL AND APPEALABLE** Order.

SO ORDERED this the _____ day of _____, 2000.

[3/23/00] //s//
JAMES E. BICKFORD, SECRETARY
NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET

APPEAL RIGHTS

In accordance with the provisions of KRS 350.0305 and KRS 350.032, any person or party aggrieved by a Final Order of the Secretary resulting from a hearing may obtain a review of the Final Order by filing in Circuit Court a Petition for Review. Such Petition must be filed within thirty (30) days after the entry or rendition of the Final Order, and a copy of the Petition must be served upon the Cabinet.

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2000, a true and accurate copy of the foregoing SECRETARY'S FINAL ORDER was mailed by first-class mail, postage pre-paid, to the following:

Walter Caldwell, Jr.
813 Kentucky Highway 1137
Cawood, Kentucky 40815-5235

and hand-delivered to:

Hon. Greg Higgins
Office of Legal Services
Natural Resources and
Environmental Protection Cabinet
Fifth Floor, Capital Plaza Tower
Frankfort, Kentucky 40601

DOCKET COORDINATOR

DISTRIBUTION:

JLD
LTS
Middlesboro Regional Office
Division of Field Services
PAC-24471-II
PAC-24418-II
PAC-24320-II
PAC-24526-II
JK/ORDER
Bond Forfeiture/DSMRE
NCJ
GDM

COMMONWEALTH OF KENTUCKY
NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET
FILE NOS. BFA-24418-042; BFA-24471-042; BFA-24320-042 AND BFA-24526-042
PERMIT NO. 848-5332
NON-COMPLIANCE NOS. 21-0761; 21-0947; 21-0883 AND 21-0948
FAILURE TO ABATE CESSATION ORDER NOS. 02-2154; 02-2456; 02-2153 AND 02-2457

NATURAL RESOURCES AND
ENVIRONMENTAL PROTECTION CABINET

PLAINTIFF

VS.

HEARING OFFICER'S REPORT AND
RECOMMENDED SECRETARY'S ORDER

WALTER CALDWELL, JR.

DEFENDANT

* * * * *

THIS MATTER is before the undersigned following the failure of the Defendant, Walter Caldwell, Jr. ("Caldwell" or "Defendant"), to appear at a Show Cause Hearing scheduled for January 4, 2000. Based upon the record of this matter, the Hearing Officer hereby makes the following Findings of Fact, Conclusions of Law and Recommendations:

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. On August 6, 1999, the Natural Resources and Environmental Protection Cabinet (hereinafter "Cabinet") filed an Administrative Complaint against Caldwell in File No. BFA-24418. On August 19, 1999, the Cabinet filed an Administrative Complaint in File No. BFA-24471.

2. On October 19, 1999, the Cabinet filed a motion to have Administrative Complaints re-served on Caldwell to allow consolidation of the above cases and to allow it to add File Nos. BFA-24320 and BFA-24526 to this action as an Amended Complaint.

3. On October 20, 1999, the Hearing Officer issued an Order granting the Cabinet's Motion and ordering the Cabinet to file an Amended Complaint by October 29, 1999.

4. On October 27, 1999, the Cabinet filed the Amended Complaint in File Nos. BFA-24471-042, BFA-24418-042, BFA-24320-042 and BFA-24526-042, in which it sought, among other things, the forfeiture of the performance bond associated with this permit. Permit No. 848-5332 is presently secured by performance bonds totaling seventy-four thousand seven hundred dollars (\$74,700).

5. Permit No. 848-5332 is not incrementally bonded. The Administrative Complaint seeks to forfeit the total bond amount of seventy-four thousand seven hundred dollars (\$74,700).

6. Permit No. 848-5332 is secured by Certificate of Deposit No. 044481 in the amount of seventy-four thousand seven hundred dollars (\$74,700), with Powell Valley National Bank as surety and Caldwell as principal.

7. The Cabinet's Administrative Complaint alleged that:

- (a) The fact of the violations cited in Notice of Non-Compliance and Order for Remedial Measures No. 21-0947 and Order of Cessation and Immediate Compliance, hereinafter "Failure to Abate Cessation Order", No. 02-2456 have been affirmed by the Secretary in a Final Order entered on July 2, 1999, for File No. PAC-24471 and that as of the date the Administrative Complaint was filed, the violations have not been abated;
- (b) The fact of the violation cited in Notice of Non-Compliance and Order for Remedial Measures No. 21-0761 and Failure to Abate Cessation Order No. 02-2154 has been affirmed by the Secretary in a Final Order entered on May 20, 1999, in File No. PAC-24418 and that as of the date the Administrative Complaint was filed, the violation has not been abated;
- (c) The fact of the violation cited in Notice of Non-Compliance and Order for Remedial Measures No. 21-0883 and Failure to Abate Cessation Order

No. 02-2153 has been affirmed by the Secretary in a Final Order entered on August 24, 1999, in File No. PAC-24320 and that as of the date the Administrative Complaint was filed, the violation has not been abated; and

- (d) The fact of the violations cited in Notice of Non-Compliance and Order for Remedial Measures No. 21-0948 and Failure to Abate Cessation Order No. 02-2457 has been affirmed by the Secretary in a Final Order entered on July 30, 1999, in File No. PAC-24526 and that as of the date the Administrative Complaint was filed, the violation has not been abated.

8. As evidenced by the signed acceptance card in the record, the Administrative Complaint (File Nos. BFA-24471-042, BFA-24418-042, BFA-24320-042 and BFA-24526-042) and Administrative Summons and Order ordering Caldwell to appear at a prehearing conference on December 6, 1999, were properly served on Caldwell on November 4, 1999, in accordance with 405 KAR 7:091, Section 5(1)(c).

9. A Prehearing Conference was held December 6, 1999. The Cabinet was represented by the Hon. Greg Higgins. The Defendant, Caldwell, failed to appear. The Hon. Otis Doan was present via telephone at the Prehearing Conference. However, Mr. Doan explained he was not representing Caldwell at that time. Since Caldwell did not appear, the Cabinet requested the Hearing Officer to enter an Order for Caldwell to appear and show cause as to why he should not be held in default.

10. On December 10, 1999, a Show Cause Order was entered and served ordering Caldwell to appear January 4, 2000, and show cause why he should not be deemed to have waived his right to an administrative hearing. The Order for Defendant to Appear and Show Cause was properly served on the Defendant in conformity with the Cabinet's regulation governing service of documents and other pleadings, 400 KAR 1:030, Section 2.

11. On January 4, 2000, a Show Cause Hearing was held. The Cabinet was represented by the Hon. Greg Higgins. No appearance was made on behalf of the Defendant, Caldwell, to show cause why the Defendant should not be deemed to have waived his right to a hearing under 405 KAR 7:092, Section 5.

12. Pursuant to 405 KAR 7:092, Section 5, if the order to show cause is not satisfied as required, the Hearing Officer shall recommend to the Secretary the entry of a final order in conformity with the relief requested by the Cabinet in its Administrative Complaint.

13. In accordance with the provisions of 405 KAR 7:092, Section 5, the Defendant has admitted to the allegations made by the Cabinet in its Administrative Complaint and failed to demonstrate why a Secretary's Order adverse to his interests should not be entered granting the Cabinet the relief it requested in its Administrative Complaint.

II. RECOMMENDATIONS

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned Hearing Officer recommends that the Secretary enter the attached recommended Order granting the Cabinet the relief it requested in its Administrative Complaint.

SO RECOMMENDED this the _____ day of _____, 2000.

_____[2/21/00] //s//_____
JAMES L. DICKINSON, HEARING OFFICER
OFFICE OF ADMINISTRATIVE HEARINGS

EXCEPTION AND RESPONSE RIGHTS

Pursuant to KRS 350.0301, any party may file exceptions to this Report and Recommendation within fourteen (14) days of service of this Report. Any party may file a Response to the any Exceptions within twenty-one (21) days of service of this Report. The Secretary will then consider this Report, any Exceptions, any Responses, and the Recommended Order and decide the case.

CERTIFICATE OF SERVICE

I hereby certify that on the _____ day of _____, 2000, a true and accurate copy of the foregoing HEARING OFFICER'S REPORT AND RECOMMENDED SECRETARY'S ORDER was mailed by first-class mail, postage pre-paid, to the following:

Walter Caldwell, Jr.
813 Kentucky Highway 1137
Cawood, Kentucky 40815-5235

and hand-delivered to:

Hon. Greg Higgins
Office of Legal Services
Natural Resources and
Environmental Protection Cabinet
Fifth Floor, Capital Plaza Tower
Frankfort, Kentucky 40601

DOCKET COORDINATOR

DISTRIBUTION:

JLD
LTS
Middlesboro Regional Office
Division of Field Services

U:\common\docs\bfa\24418.r&r

